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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.4788 of 2006

Paritosh Sonkar

-Versus-

State of Chhattisgarh & others

ORDER FOR CONSIDERATION

Sd/-
L.C. Bhadoo
Judge

HON'BLE MR. JUSTICE DHIRENDRA MISHRA

9 Agree.

Sd/-
Dhirendra Mishra
Judge

POST FOR PRONOUNCEMENT OF ORDER ON 19th JUNE, 2007

Sd/-
L.C. Bhadoo
Judge

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.4788 of 2006

PETITIONER: Paritosh Sonkar, Son of Shri Vikas Sonkar, aged about 18 years, Resident of 8/21, Sector – 1, Shankar Nagar, Raipur (C.G.)

- Versus -

RESPONDENTS:

1. State of Chhattisgarh, Through: The Secretary, Department of Health and Family Welfare, D.K.S. Bhawan, Secretariat, Raipur (C.G.)
2. The Director, Medical Education Old Nurses Hostel, D.K.S. Bhawan Campus, Raipur (C.G.)
3. Chhattisgarh Professional Examination Board, C/166, Tagore Nagar, Raipur (C.G.), Through: The Secretary
4. The Dean, Chhattisgarh Institute of Medical Sciences, (CIMS) Bilaspur (C.G.).
5. Guru Ghasidas University, Bilaspur, Through: Its Registrar.
6. Dr. S.L. Adie, Director Medical Education, Government of Chhattisgarh, Raipur.
7. Dr. V.D. Tiwari, Dean, CIMS, Bilaspur.
8. Ku. Shradha Bandhi, First Year Student, M.B.B.S. Course, Chhattisgarh Institute of Medical Sciences (CIMS) Bilaspur (C.G.).
9. Ku. Renu Patil, First Year Student, M.B.B.S. Course, Chhattisgarh Institute of

Medical Sciences (CIMS) Bilaspur (C.G.).

10. Mr. Anubhav Chandrakar, First Year Student M.B.B.S. Course, Chhattisgarh Institute of Medical Sciences (CIMS) Bilaspur (C.G.).

(Writ Petition under Article 226/227 of the Constitution of India)

Present:

Shri J.D. Bajpai, Advocate:	For the petitioner.
Shri U.N.S. Deo, G. A.:	For respondents No.1, 2 & 6.
Shri Pankaj Agrawal, Advocate:	For respondent No.3.
Shri Manindra Shrivastava, Sr. Advocate With Shri Ashish Shrivastava, Advocate:	For respondents No.4 & 5.
Shri Bhaskar Payashi, Advocate:	For respondent No.7.
Shri Sanjay K. Agrawal, Advocate:	For respondent No.9.
Shri Kishore Bhaduri, Advocate:	For respondent No.10.

CORAM: - HON'BLE SHRI L.C. BHADOO AND HON'BLE SHRI DHIRENDRA MISHRA, JJ.

O R D E R

(Passed on 19th June, 2007)

The following order of the Court was passed by *L.C. Bhadoo, J.*: -

(1) By this writ petition under Article 226/227 of the Constitution of India the petitioner, who appeared in the Pre Medical Entrance Test, 2006 conducted for 1st year of M.B.B.S. Course for Medical College, Raipur and Chhattisgarh Institute of Medical Sciences, as an OBC Sainik Class candidate, has challenged admission process conducted by respondent No.3 under the aegis of respondent No.2 on the ground that the respondents have failed to adhere to the sub rule (5) of Rule 4 of the MBBS and BDS Entrance Examination Rules, 2006 (for short 'the Rules, 2006') whereby 3% horizontal reservation has not been made for the candidates belonging to O.B.C. Sainik Class in CIMS, Bilaspur.

(2) Brief facts leading to filing of this writ petition necessary for the disposal of this writ petition are that the petitioner herein appeared as an OBC Sainik Class candidate (Ex-Serviceman Sainik) in the PMT Examination, 2006 conducted for first year M.B.B.S. Course in the Medical College, Raipur and the Chhattisgarh Institute of Medical Sciences (hereinafter referred to as 'the Institute'). But in terms of sub rule (5) of Rule 4 of the Rules, 2006 no seat was reserved for OBC Sainik Class candidate in CIMS, Bilaspur whereas, as per Schedule A attached with the Rules, 2006 a provision for horizontal reservation of 3% Sainik Class has been made i.e. one seat for unreserved Sainik Class candidate, one seat for ST Sainik Class candidate, 3rd seat for SC Sainik Class candidate in odd year and for OBC Sainik Class candidate in even year has been made. Since 2006 was even year, respondents ought to have kept one seat reserved for OBC Sainik Class candidates in CIMS, Bilaspur.

(3) Further case of the petitioner is that as he was successful in the said examination, therefore, he was called for scrutiny and counseling for admission to the M.B.B.S. Course. When the petitioner was not given admission, he made a representation on 22-7-2006 and apprised the respondents about the arrangement made in Schedule A for OBC Sainik Class candidates, but the respondents have not taken any steps. The petitioner pointed out that for admission to the First Year M.B.B.S. Course in CIMS, Bilaspur Schedule A has not been adhered to. Therefore, the petitioner has prayed that respondents may kindly be directed to reserve one seat for Ex-serviceman quota for admission in CIMS, Bilaspur according to Schedule A of the Rules framed by the Government itself.

(4) Reply has been filed on behalf of respondents No.1 and 2 wherein it has been mentioned that there are 100 seats available in the Institute for the first year of M.B.B.S. Course, out of which 50 are free seats and 50 are payment seats. 3% horizontal reservation is prescribed for each of the class/category viz. handicapped, freedom fighter and military personnel. When 3% of 50 free seats and 50 payment seats are taken, it comes to 1.5 for free seat and 1.5 for payment seat. As the distribution of 0.5 seat cannot be done, keeping in view the meritorious students and backward students, one more seat was made available adding 0.5 seat as a free seat. So, 2 free seats were made available as against one payment seat. As only two

seats are available to each of the classes, one seat for each of them was kept for unreserved category and one seat each was made rotational seat, which is to be allotted to ST, SC and OBC by rotation. As the petitioner belongs to OBC and falls under the class of military personnel, he is claiming a seat under the head, but, the seat cannot be given to him for the reason that this year the seat is available only for ST, not for either SC or OBC; next year it will be available only to SC and not to the other two categories, thereafter it would be available only to OBC and not to SC or ST. Therefore, challenge of the petitioner that no reservation has been made for military personnel is incorrect and not legally tenable. Looking to the constitutional mandate reservation is required to be given to all the 3 categories i.e. SC, ST and OBC, but as the seats are not available for all the 3 categories in the same year, respondents No.1 and 2 had given preference to that category i.e. ST, which is having a higher percentage of reservation than the category of SC, which is having a still higher percentage of reservation than OBC. Respondents No.1 and 2 have specifically denied that no reservation was made to military personnel. Schedule A pertains to distribution of seats in Medical College, Raipur and not in CIMS. In the former 100 seats are available whereas, in the latter only 50 seats are available, therefore, distribution schedule for CIMS is different from Schedule A. Copy of the Schedule applicable in CIMS, which was displayed at the time of counseling by respondents No.1 and 2 is Annexure-R-1/1.

(5) Almost similar reply has been filed on behalf of respondents No.4 & 5 that the petition of the petitioner is misconceived as the arrangement of seats has been made as approved by the Directorate of Medical Education vide memo dated 26-7-2006 and notification dated 22-4-2006. As per the Rules, 2006, notified vide notification dated 8-3-2006 by the Department of Health & Family Welfare, Government of Chhattisgarh, Raipur and in view of sub-rule (5) of Rule 4 of the Rules, 2006, for arrangement of seats and horizontal reservation for Sainik quota, 3% of the seats in each class have been reserved. Respondent CIMS pursuant to the letter dated 11-7-2006 issued by respondent No.2, Director of Medical Education with regard to the submission of arrangement of seats and reservation in MBBS Course at CIMS, Bilaspur, submitted arrangement of seats and reservation thereof along with the Schedule of Fee for payment seats, free seats and other fee charges to respondent No.2 i.e. Director, Medical Education on the same

day i.e. 11-7-2006. CIMS, Bilaspur in their proposal vide letter dated 11-7-2006 proposes a seat in the Sainik quota for OBC in the free seat and similarly also proposes seat for Sainik quota in OBC for payment (Management quota), however, in response to the aforesaid letter, respondent No.2, Director of Medical Education, Raipur, issued a memo dated 28-7-2006 enclosing a notification dated 22-4-2006 wherein distribution of seats has been notified in respect of freedom fighters/Sainik/ handicapped which was arranged and approved by the Government of Chhattisgarh pursuant to the order passed by this Court in W.P. No.4714/2005 wherein it has been directed for vertical and horizontal reservations in the aforesaid categories. Respondent CIMS in view of the aforesaid memo dated 28-7-2006 issued by respondent No.2 and notification dated 22-4-2006 issued by respondent No.1 submitted fresh arrangement of seat vide covering memo dated 7-8-2006 with reservations in each category as desired and approved by respondents No.1 and 2. According to the arrangement of seats and reservations as approved and sanctioned by respondents No.1 and 2, there are 2 seats for Sainik quota each includes Ex-servicemen quota also, one each for ST in respect of free seat and only one seat reserved for Sainik quota which includes Ex-servicemen quota also for unreserved category. Therefore, there is no Sainik quota for OBC candidates in either of the free or payment seat. Copies of memo/letters dated 11-7-2006, 28-7-2006 & 7-8-2006 are Annexures R-4/1, R-4/2 & R-4/3, respectively. Successful candidates were called for counseling by respondent No.2 i.e. Director, Medical Education, Raipur itself. The entire counseling was done by respondent No.2, Director Medical Education, Raipur. Ultimately, list of 50 candidates of free seats and 50 candidates of payment seats for CIMS, Bilapsur was published. Copy of chart showing list of successful candidates of free seats and payment seats both at CIMS, Bilaspur is Annexure-R-4/4.

(6) We have heard Shri J.D. Bajpai, counsel for the petitioner, Shri U.N.S. Deo, Govt. Advocate, for the State and Shri Manindra Shrivastava, Sr. Advocate for respondents No.4 & 5 i.e. CIMS & Guru Ghasidas University and counsel for other respondents.

(7) The main grievance of the petitioner's counsel Shri J.D. Bajpai raised during the course of argument was that rules for admission to the 1st year

MBBS course, 2006 were issued by the Director, Medical Education, Government of Chhattisgarh for 100 seats each in Raipur Medical College and CIMS, Bilaspur. As per Schedule attached with the Rules, issued in compliance of sub-rule (5) of Rule 4 of the Rules, 2006, a separate schedule of reservation for separate categories has also been published. As per sub-rule (5) of Rule 4 of the Rules, 2006, 3% horizontal reservation for Sainik class has been made, out of 3%, one seat has been kept reserved for unreserved Sainik class, one seat has been reserved for ST Sainik class and for 3rd seat an alternative arrangement has been made i.e. in the odd year 3rd seat will go to the SC Sainik class candidate and in even year 3rd seat will go to the OBC Sainik class candidate. 2006 being even year, 3rd seat ought to have been given to the OBC Sainik class candidate. The above arrangement is applicable to the CIMS also, as the scrutiny and counseling was conducted by Director, Medical Education and combined examination for Medical College, Raipur and CIMS, Bilaspur was conducted.

(8) On the other hand, emphasis of counsel for respondents No.1 to 4 was that CIMS Medical College is under the control of Guru Ghasidas University, Bilaspur, same is being run by the said University. 100 seats have been divided into two parts i.e. admission to first 50 seats is being given on normal fee which is called as free seat and admission to the next 50 seats is being given on payment basis which is called as payment seats. Therefore, for all reserved classes/categories, bifurcation has to be made on the basis of 50-50 seats. For 3% horizontal reservation of Sainik class only 1.5 seats were available against free seat and 1.5 seats were available against payment seat. Therefore, with the approval of the Director, Medical College, Government of Chhattisgarh, 2 seats for Sainik class were reserved against free seat; one for unreserved category and one for ST category and one seat was reserved for unreserved category against payment seat. 21% reservation is for ST, 15% for SC and 14% for OBC. Percentage of ST being higher next 2nd seat was reserved for ST and it was further decided that 2nd seat will rotate every year among 3 categories i.e. ST, SC and OBC. As seats meant for unreserved category are 50, therefore, one seat was given to them. Percentage of ST being 21% in this year, 2nd free seat was given to ST, next year it will be given to SC and in 3rd year it will be given to OBC. This arrangement shall continue. 3rd seat was given against payment seat to unreserved category. This arrangement is not violative of any

provision of Constitution and it has been made on reasonable basis, therefore, no grievance can be raised against such distribution of seats.

(9) This matter came up before the Division Bench on 20th September, 2006 presided over by Hon'ble the then Chief Justice. On that day, Bench ordered that distribution of seats is not in accordance with sub-rule (5) of Rule 4. Ultimately, 4th and 5th respondents i.e. CIMS and Guru Ghasidas University were directed to reserve one seat for unreserved category, one seat for Scheduled Tribe category and one seat for OBC category out of 100 admissions to be made during the academic session 2006-2007.

(10) Shri Manindra Shrivastava, Sr. Advocate, argued that pursuant to the above Court order 3rd seat was reserved for OBC candidate against payment seat, but on the last day, no candidate from OBC category was available, even the petitioner was not present with the original documents, therefore, his case could not be considered for admission, that seat was ultimately converted into unreserved OBC category seat as per Rules, 2006.

(11) Shri J.D. Bajpai argued that on that day since his original testimonials were with some other Medical College with whom he already took admission, therefore, he could not produce, but photo-state copies of his testimonials were submitted, therefore, admission committee ought to have considered the case of the petitioner.

(12) Having heard learned counsel for the parties, we have perused the Rules, 2006 and other records. Sub-rule (5) of Rule 4 of the Rules, 2006 stipulates that among other reservations 3% horizontal reservation for Sainik class. Accordingly, Schedule A attached with these rules depicts arrangement of seats reserved for various classes/categories in consonance with sub-rule (5) of Rule 4 of the Rules, 2006. Accordingly, one seat has been permanently reserved on horizontal basis for unreserved class/category among Sainik class, one seat has been permanently reserved on horizontal basis for ST Sainik class candidate and for 3rd seat since candidates of 2 classes/categories namely, SC and OBC are to be accommodated and their percentage of reservation being 15% & 14%, therefore, an arrangement has been made that in odd year 3rd seat will go to the SC and in even year it will go to OBC. In the present case, the whole confusion seems to have been created by the respondents on account of the

fact that as far as CIMS is concerned, out of 100 seats, 50 seats are free seats i.e. on normal fee and remaining 50 seats are meant for Management quota or payment seat, therefore, only 1.5-1.5 seats were available for Sainik class candidate against free seat and payment seat, therefore, a provision has been made that 2 seats on horizontal basis have been reserved out of 50 free seats, i.e. one seat will always go to the unreserved category being 50% seats meant for unreserved category and for remaining 3 categories i.e. ST, SC and OBC 2nd seat will rotate among them and again 3rd seat meant for Sainik class candidate was reserved on horizontal basis for unreserved category in 50 payment seats.

(13) We are not convinced with the arrangement made and argument advanced by learned counsel for the respondents for the reason that in all 100 seats are available for first year MBBS course in CIMS. Bifurcation of 50-50 seats has been made only in respect of payment of fee i.e. 50 seats have been made as free seats and 50 seats have been made against Management quota or payment seat. This distribution or classification has been made for the purpose of fee only and this cannot affect sub-rule (5) of Rule 4 of the Rules, 2006. 3% horizontal reservation for Sainik, freedom fighter and handicapped candidate classes can be made reasonably by giving equal opportunity to all the four categories i.e. unreserved, ST, SC & OBC without prejudice to the interest of any of the categories.

(14) The arrangement for Sainik class for three categories i.e. ST, SC & OBC ought to have been made in such a way that these three reserved categories must get their due. Looking to the peculiar situation on account of bifurcation of 100 seats into two parts i.e. 50 free and 50 payment seats, for proper implementation of sub-rule (5) of Rule 4 of the Rules, 2006 proper arrangement ought to have been made by the respondents like this seats meant for unreserved category are 50, therefore, one free seat of Sainik class ought to have been reserved for unreserved category and in the first year 2nd free seat ought to have been given to ST Sainik category as their percentage of reservation is 21%. Thereafter for second year 2nd seat ought to have been made available to SC category and next year to OBC category, in the 4th year again to ST category by rotation in order to give chance to every category. In case, if no candidate of Sainik class is available in the category for which seat is available, then that seat could have been given to

a category as per principle incorporated in sub-rule (8) of Rule 4 of the Rules, 2006. As far as third seat is concerned, that ought to have been made available against 50 payment seats to all the four categories. In the first year, third seat ought to have been made available to unreserved, next year to ST, thereafter next year to SC and thereafter to OBC so as to satisfy all the four categories. In case, no candidate is available from the category for which seat is reserved, then principle incorporated in sub-rule (8) of Rule 4 could have been applied. In our opinion, above formula will meet the requirement of sub-rule (5) of Rule 4 as well as all the four categories will get equal opportunity without prejudice to any of the categories. As per sub-rule (5) of Rule 4 of the Rules, 2006, 3% horizontal reservation has to be made for freedom fighter and handicapped classes. For these classes also similar kind of horizontal reservation on rotational basis can be made.

(15) If above arrangement is made, even then the petitioner was not entitled for admission in the year 2006. Moreover, 3rd seat has to go to unreserved category. Moreover, the petitioner has not claimed admission against payment seat. Even during the course of argument, Shri J.D. Bajpai, learned counsel for the petitioner, submitted that he has filed the petition only for free seats, therefore, the petitioner is not entitled for any relief. As admitted by learned counsel for both the parties during the oral arguments that in pursuance of the interim order of this Court dated 20-9-2006 even 3rd seat was reserved for OBC Sainik category candidate, being last day when the petitioner was not present, his father was present, but he too was not ready with original testimonials and no other OBC Sainik class candidate was available, therefore, being last day of the admission, seat was converted into unreserved category and admission was given to respondent No.10. Perusal of para-4 of the compliance report filed in pursuance of the Court order dated 20-9-2006 by respondents No.4 and 5 reveals that vide letter dated 30-9-2006, sent by fax and received at CIMS at about 7.02 p.m. the Director, Medical Education Raipur instructed the Dean, CIMS, Bilaspur to grant admission as per instructions contained in the said letter. In so far as the petitioner is concerned, petitioner did not turn up but in his place his father was present along with 9 other candidates which has been so recorded at 6.16 p.m. However, when he was asked to submit originals of the testimonials/certificates which all the candidates were required to submit,

he expressed his inability saying that the original testimonials/certificates are not available for being submitted.

(16) Shri Bajpai argued that since original testimonials were with some other Medical College, therefore, father of the petitioner produced photo-state copies of the testimonials and respondents were under obligation to accept those photo-state copies for admission of the petitioner.

(17) But, this argument of learned counsel for the petitioner is without merit for the reason that Rule 7 of the Rules, 2006 stipulates that at the time of counseling candidate himself is required to deposit all the original testimonials. In the absence of original testimonials at the time of counseling candidate shall not be entitled for admission. Therefore, in view of the above mandate of Rule 7, as the petitioner was not ready with original testimonials on the last day of admission, therefore, on this ground also, petition of the petitioner is liable to be dismissed.

(18) Pursuant to the order dated 20-9-2006 in which observation regarding action on the part of Dean was made, Dr. V.D. Tiwari, Dean, CIMS has been made party and reply has been filed by him. We have perused reply filed by Shri Tiwari. Perusal of the reply and examining whole case, we are satisfied that the explanation offered by Dr. V.D. Tiwari is satisfactory and there was no deliberate action in the matter on the part of Dean.

(19) For the foregoing reasons, we are of the opinion that this writ petition being devoid of merit is liable to be dismissed and it is hereby dismissed.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge

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